

HOUSE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 228

AN ACT

To amend chapter 407, RSMo, by adding thereto  
five new sections relating to unsolicited  
commercial electronic mail, with penalty  
provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

Section A. Chapter 407, RSMo, is amended by adding thereto  
five new sections, to be known as sections 407.1135, 407.1138,  
407.1141, 407.1144, and 407.1147, to read as follows:

407.1135. As used in sections 407.1135 to 407.1147, the  
following words and phrases mean:

(1) "Commercial electronic mail", an electronic mail  
message sent for the purpose of encouraging the purchase or  
rental of, or investment in, property, goods, or services;

(2) "Electronic mail address", a destination, commonly  
expressed as a sequence of characters, to which electronic mail  
may be sent or delivered;

(3) "Initiate the transmission", the action by the original  
sender of an unsolicited electronic mail solicitation that

1 results in receipt by a subscriber of that solicitation,  
2 including electronic mail received by a subscriber which was sent  
3 by a third party at the request of or direction of the original  
4 sender;

5 (4) "Ongoing business relationship", shall include:

6 (a) Electronic mail in response to an inquiry where the  
7 subscriber has requested further information from the business  
8 and has provided an e-mail address;

9 (b) Electronic mail sent on the basis of an ongoing  
10 business relationship that has not been terminated by the  
11 subscriber by requesting removal from the business's electronic  
12 mail list. For the purpose of removal from the business's  
13 electronic mail list, the business entity shall provide a means  
14 of removal from the entity's electronic mail list in accordance  
15 with section 407.1123; or

16 (c) Electronic mail from a separate legal entity with which  
17 a subscriber has an established business relationship on the  
18 basis that the entity shares the brand name and the subscriber,  
19 and has not otherwise instructed the entity cease further  
20 unsolicited electronic mail in accordance with section 407.1123;

21 (5) "Subscriber", any person, corporation, partnership, or  
22 other entity who has subscribed to an interactive computer  
23 service and has been designated with one or more electronic mail  
24 addresses;

1       (6) "Unsolicited commercial electronic mail", a commercial  
2 electronic mail message sent without the consent of the  
3 recipient, by a person with whom the recipient does not have an  
4 ongoing business relationship, other than:

5       (a) An electronic mail message responding to an inquiry  
6 from a subscriber who has requested further information and  
7 provided an electronic e-mail address;

8       (b) An electronic mail message initiated by a person  
9 licensed by the state of Missouri to carry out a trade,  
10 occupation, or profession who is setting or attempting to set an  
11 appointment for actions related to that licensed trade,  
12 occupation, or profession;

13       (c) An electronic mail message sent to a subscriber that  
14 was in a direct business relationship, not including the parent  
15 or subsidiary business organization of the subscriber, with the  
16 sender within the previous twelve months;

17       (d) An electronic mail communication to a subscriber from  
18 an original sender which is a bank, farm credit service, or  
19 credit union shall not be considered unsolicited electronic mail  
20 for purposes of section 407.1135 to 407.1147.

21       (e) An electronic mail message that is sent to a subscriber  
22 from an original sender who has a personal relationship with the  
23 subscriber; or

24       (f) An electronic mail message from the original sender

1 that is indirectly received by a subscriber when another  
2 subscriber voluntarily forwards that communication without the  
3 knowledge of the original sender and without any consideration  
4 provided by the original sender to the subscriber forwarding the  
5 communication.

6 407.1138. No person or entity shall, after January 1, 2005,  
7 initiate the transmission of any unsolicited electronic mail to  
8 any subscriber in this state who has given notice to the attorney  
9 general, in accordance with rules promulgated pursuant to section  
10 407.1141, of such subscriber's objection to receiving unsolicited  
11 electronic mail.

12 407.1141. 1. The attorney general shall establish and  
13 provide for the operation of a state database to compile a list  
14 of electronic mail addresses of subscribers who object to  
15 receiving unsolicited electronic mail. The attorney general  
16 shall have such database in operation no later than January 1,  
17 2005.

18 2. Information contained in the database established  
19 pursuant to this section shall be used only for the purpose of  
20 compliance with this section or in a proceeding or action  
21 pursuant to sections 407.1135 to 407.1147. Such information  
22 shall not be considered a public record pursuant to chapter 610,  
23 RSMo.

24 3. The general assembly may appropriate moneys from

1 appropriate funds including the merchandising practices revolving  
2 fund established in section 407.140, for the purposes of  
3 establishing and operating the state database.

4 4. Any entity that obtains the database from the attorney  
5 general pursuant to subsection 1 of this section may distribute  
6 the database to its employees or any independent contractor for  
7 use in the independent contractor's business, provided that the  
8 independent contractor is regularly associated with the entity  
9 and is engaged in the same or similar business as the entity.

10 5. The attorney general shall notify a web site operator of  
11 a child pornography site or sites residing on the web site  
12 operator's server after a review by the attorney general  
13 determining the identified site or sites contain child  
14 pornography as defined in section 573.010, RSMo. For the purpose  
15 of this subsection, the attorney general shall notify in writing  
16 the person designated by the web site operator to receive such  
17 notice, or, in the absence of a designation by the web site  
18 operator, the chief legal officer of the web site operator, or,  
19 in the absence of a chief legal officer, the executive officer of  
20 the web site operator. If the web site operator takes action to  
21 remove the alleged child pornography from its servers after  
22 receiving such notice, it shall be immune from suit for its  
23 decision to do so. If the web site operator does not promptly  
24 remove the alleged child pornography, the attorney general may

1 seek a judicial determination that the material is child  
2 pornography and an order requiring its removal from the web site  
3 operator's server within thirty days of the issuance of the  
4 order. Failure to remove child pornography in response to such  
5 an order shall be punished as contempt of court and subject to  
6 criminal penalties as set out in sections 573.025 and 573.035,  
7 RSMo.

8 6. No later than July 1, 2004, the attorney general shall  
9 promulgate rules governing the establishment and administration  
10 of a state database as necessary and appropriate to fully  
11 implement the provisions of sections 407.1135 to 407.1147.

12 7. No rule or portion of a rule promulgated pursuant to the  
13 authority of this section shall become effective unless it has  
14 been promulgated pursuant to chapter 536, RSMo.

15 407.1144. 1. Any person or entity who initiates the  
16 transmission of any electronic mail message to any subscriber in  
17 this state for the purpose of encouraging the purchase or rental  
18 of, or investment in, property, goods or services, other than a  
19 communication responding to an electronic mail message initiated  
20 by the subscriber, shall, at the beginning of such message,  
21 clearly state the identity of the person or entity initiating the  
22 transmission.

23 2. It shall be a violation of this section for any person  
24 that sends an unsolicited commercial electronic mail message to

1 fail to use the exact characters "ADV:" as the first four  
2 characters in the subject line of the unsolicited commercial  
3 electronic mail message.

4 407.1147. 1. The attorney general may initiate proceedings  
5 relating to a knowing violation or threatened knowing violation  
6 of sections 407.1135 to 407.1147. Such proceedings may include,  
7 without limitation, an injunction, a civil penalty up to a  
8 maximum of five thousand dollars for each knowing violation and  
9 additional relief in any court of competent jurisdiction. The  
10 attorney general may issue investigative demands, issue  
11 subpoenas, administer oaths, and conduct hearings in the course  
12 of investigating a violation of sections 407.1135 to 407.1147.

13 2. In addition to the penalties provided in subsection 1 of  
14 this section, any person or entity that violates sections  
15 407.1135 to 407.1147 shall be subject to all penalties, remedies  
16 and procedures provided in sections 407.010 to 407.130. The  
17 remedies available in this section are cumulative and in addition  
18 to any other remedies available by law.

19 3. It shall be a defense in any action or proceeding  
20 brought pursuant to this section that the defendant has  
21 established and implemented, with due care, reasonable practices  
22 and procedures to effectively prevent the transmission of  
23 unsolicited electronic mail messages in violation of section  
24 407.1138.

1       4. No action or proceeding may be brought pursuant to this  
2 section:

3       (1) More than two years after the person bringing the  
4 action knew or should have known of the occurrence of the alleged  
5 violation; or

6       (2) More than two years after the termination of any  
7 proceeding or action arising out of the same violation or  
8 violations by the state of Missouri, whichever is later.

9       5. A court of this state may exercise personal jurisdiction  
10 over any nonresident or his or her executor or administrator as  
11 to an action or proceeding authorized by this section in the  
12 manner otherwise provided by law.

13       6. No telecommunications utility or Internet service  
14 provider that carries an unsolicited electronic mail message over  
15 its network shall be held liable for violations of section  
16 407.1138 or 407.1144 when another person or entity initiates the  
17 transmission of that message.